

**REVIEW OF PUBLIC POLICY CONSIDERATIONS
RAISED BY WIRELESS ELIGIBLE
TELECOMMUNICATIONS CARRIER (ETC)
APPLICATIONS**

PREPARED BY CURRY & ASSOCIATES
FOR THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
IN RESPONSE TO ORDER No. 2003-591

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REVIEW OF PUBLIC POLICY CONSIDERATIONS RAISED BY WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC) APPLICATIONS

EXECUTIVE SUMMARY

The Telecommunications Act of 1996 reaffirmed and expanded the goal of affordable, nationwide telephone service to preserve and advance universal service, and expanded the role of the federal Universal Service Fund in providing mechanisms that provide support for high cost areas, low income customers, schools and libraries, and rural health care programs. In order to qualify for federal high cost support programs, a carrier must be designated by the state as an Eligible Telecommunications Carrier (“ETC”). In the State of South Carolina, telecommunications carriers that wish to be eligible to receive intrastate universal service support must assume the obligations of carrier(s) of last resort, as designated by the Commission.

In recent months, the designation of wireless carriers as ETCs has been raised as an issue in a growing number of states, as well as the FCC. At the heart of the issue are concerns regarding comparative costs of providing services, and the increasing size of USF payments to wireless ETCs.

This review is provided in response to the Commission’s Order No. 2003-591 in Docket No. 2003-158-C, which instructs the Commission Staff to prepare, or to have prepared, a study framing and discussing the issues raised by wireless ETC applications. The review does not reach definitive recommendations, but will serve as a starting point for further discussion by parties and the Commission and its staff. There are, however, several important points of emphasis that should be considered by the Commission in this proceeding:

- Wireless ETC Designation Requirements are Not Limited to FCC Rules. State commissions are allowed to adopt regulations that are *not inconsistent with* the FCC’s rules to preserve and advance universal service. Court rulings have supported state commissions’ flexibility and ability to consider the specific facts associated with each ETC application.
- Analysis of Public Interest is Critical. The Commission must analyze the public interest of all potential ETCs, both rural and non-rural. The FCC recently stated that it does not believe that the designation of an additional ETC based merely upon a showing that the carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. A more detailed public interest analysis is warranted.
- The Commission Can Direct the Use of USF Monies. The state may earmark high-cost support funds for network needs, such as additional channel capacity, new cell sites, or upgrading of facilities from analog to digital. The Commission has the ability to add requirements, direct funds and timing of upgrades, and develop priority of issues.
- Verification of Use of USF Monies Should Expand. The Commission should consider development of its annual certification requirements in order to ensure that all ETCs are accountable for using federal universal service funds to provide the supported services and for associated infrastructure costs.

I. INTRODUCTION

The Communications Act of 1934 stated that all Americans should have access to “rapid, efficient Nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges.”¹ The Telecommunications Act of 1996 (“FTA” or “Act”) reaffirmed and expanded the goal of affordable, nationwide telephone service to preserve and advance universal service.² The current federal Universal Service Fund (“USF”) includes four support mechanisms: support for high cost service areas; support for low income customers; support for rural health care providers; and support for schools and libraries. Today, the Federal Communications Commission (“FCC”) provides universal support through the federal USF, in addition to many state-run universal service funds. South Carolina established its statewide USF in Docket No. 1997-153-C.³

In order to receive support from the federal USF, a carrier must be designated as an ETC.⁴ The designation process is handled by the states, except in instances when the state does not have jurisdiction over the carrier seeking ETC designation. The Public Service Commission of South Carolina (“Commission”) began approving ETC designation petitions in November 1997.⁵

On October 20, 2003, the Commission issued Order No. 2003-591 in Docket No. 2003-158-C.⁶ The Order instructed the Commission Staff to prepare, or to have prepared, a study framing and discussing the issues raised by wireless ETC applications. The Commission determined that in order to effectively consider all of the issues, including important public policy considerations, pertaining to wireless ETC applications, all the parties to the proceeding should address the issues, in addition to a neutral, independent analysis.⁷

The designation of wireless carriers as ETCs is an issue faced by a growing number of states, and is addressed in recent FCC decisions and recommendations.⁸ On a national basis, in the 1st quarter of 2002, wireless carriers received \$4,251,478 in high-cost support.⁹ Little more than a year later, in the 2nd quarter of 2003, \$34,021,496 of high-cost support was received by wireless ETCs. This was an 800% increase within only 15 months.¹⁰

¹ US Communications Act of 1934, Chapter 5 – Wire or Radio Communication, Subchapter 1 – General Provisions, § 151.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151 et seq. (“FTA” or “Act”).

³ *Proceeding to Establish Guidelines for an Interstate Universal Service*, Docket No. 1997-239-C; See also Appendix B of this study.

⁴ 47 U.S.C. § 254(e).

⁵ *Order Designating LECs as Eligible Telecommunication Carrier*, Order No. 97-958, *Proceeding to Establish Guidelines for an Interstate Universal Service*, Docket No. 1997-239, November 24, 1997.

⁶ *Order Continuing Hearing, Vacating Scheduling Order, and Ordering Study*, Order No. 2003-591, *Petition of FTC Communications, Inc. DBA FTC Wireless for Designation as an Eligible Telecommunications Carrier (ETC) in the State of South Carolina*, Docket No. 2003-158-C, October 20, 2003; See Appendix A of this study for more information regarding this proceeding.

⁷ *Id.*, at 2-3. See also *Order*, Order No. 2003-640, *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, October 23, 2003.

⁸ See Appendix C of this study for a summary of select federal and state proceedings addressing wireless ETC designations.

⁹ Comments of the National Association of State Utility Consumer Advocates, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-1, May 4, 2003, Attachment A.

¹⁰ *Id.*

II. REVIEW OF FEDERAL AND STATE ETC CRITERIA

A. Review of Federally Mandated ETC Criteria

The current federal requirements for ETC designation, FTA § 214(e)(1), require a common carrier designated as an ETC to “offer the services supported by the federal universal service mechanisms throughout the designated service area.”¹¹ The rule further requires that the ETC offer such services either using its own facilities or a combination of its own facilities and resale of another carrier’s services, including the services offered by another ETC.¹² As noted in the Federal-State Joint Board on Universal Service’s (“Joint Board’s”) *Recommended Decision*, while FTA § 214(e)(1) requires an ETC to “offer” the supported services, the FCC does not require a competitive carrier to actually “provide” the supported services throughout the designated service area before receiving designation as an ETC.¹³

Section 54.101(a) of the FCC’s rules lists the services that are to be supported by the federal USF mechanism. The services include: voice grade access to the public switched network; local usage; Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services, including 911 and enhanced 911 (E911); access to operator services; access to interexchange services; access to directory assistance; and toll limitation for qualifying low-income customers.¹⁴

Section 214(e)(1)(B) of the FTA requires ETCs to advertise the supported services and their charges using media of general distribution throughout the designated service area.¹⁵ Federal rules further require an ETC to “advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.”¹⁶

When a carrier seeks ETC designation in an area served by a rural telephone company, an additional requirement is applied. Section 214(e)(2) of the FTA requires the state commission to find that the ETC designation is in the public interest.¹⁷

Recently, the Joint Board recommended additional criteria for state commissions and the FCC to consider when processing petitions for ETC designations. These new “broadly applied recommended federal guidelines would be most likely to ensure designation of carriers that are: financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, able to be the sole ETC in a service area if all other ETCs relinquish their designations, and able to provide consumers an evolving level of universal service.”¹⁸

¹¹ *Federal-State Joint Board on Universal Service; Recommended Decision*, CC Docket No. 96-45, FCC 04J-1 (Adopted Feb. 27, 2004) at ¶ 19 (“*Recommended Decision*”); 47 U.S.C. § 214(e)(1)(A).

¹² *Recommended Decision*, at ¶ 6; 47 U.S.C. § 214(e)(1). An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.201(i).

¹³ *Recommended Decision*, at ¶ 20; *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-73 (2000), *recon. pending* (Section 214(e) Declaratory Ruling).

¹⁴ 47 C.F.R. § 54.101(a).

¹⁵ 47 U.S.C. § 214(e)(1)(B).

¹⁶ 47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415.

¹⁷ 47 U.S.C. § 214(e)(2).

¹⁸ *Recommended Decision*, at ¶ 16.

B. Review of USF Eligibility Criteria for South Carolina

The Commission's Order in Docket No. 97-239C approved guidelines for use in administering the South Carolina USF.¹⁹ In order to be eligible for state USF support, a telecommunications carrier must assume the obligations of a carrier of last resort. According to Section 2 of those guidelines,

"Telecommunications carriers that assume the obligations of carrier(s) of last resort (COLRs) will be eligible to receive intrastate universal service support. Carrier(s) of last resort will be designated by the Commission. Carrier(s) of Last Resort are "eligible telecommunications carriers" as defined in Section 214(e) of the federal Telecommunications Act of 1996, but not all eligible telecommunications carriers are carriers of last resort."

A carrier must meet the following requirements to be designated as a COLR by the Commission:

- The COLR must be willing and able and must certify its commitment to provide the defined services supported by the State USF to any requesting customer's location within the designated service area as defined in the guidelines;
- The COLR must advertise the availability of such services and the charges therefor using media of general distribution;
- The COLR must provide its services at not more than the Commission-authorized maximum stand-alone rates for the defined basic local exchange telecommunications service, and must meet all service quality and provision rules established by the Commission for universal services;
- The COLR may satisfy its obligation to provide the defined services over its own facilities or a combination of its own facilities and resale of another carrier's services. The COLR may also satisfy its obligation to provide the defined services in whole or in part through the lease of unbundled network elements (UNEs). A carrier that provides service solely through the resale of other carriers' facilities is not entitled to universal service support.

The approved guidelines define a *designated support service area* as "the geographic area eligible for state universal service support. The designated support service area is based upon a wire center for non-rural incumbent local exchange companies ("ILEC") and Sprint United Telephone Company and study area for rural ILECs other than Sprint United Telephone Company."

¹⁹ Order Approving Final Documents And Vacating Order No. 2001-954, Order No. 2001-996, Proceeding to Establish Guidelines for an Intrastate Universal Service Fund, Docket No. 97-239C, Oct. 10, 2001.

Of importance to the eligibility issue for wireless carriers in South Carolina is the statutory definition of COLR:²⁰

(10) The term "carrier of last resort" means a facilities-based local exchange carrier, as determined by the commission, not inconsistent with the federal Telecommunications Act of 1996, which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service area. Initially, the incumbent LEC must be a carrier of last resort within its existing service area.

C. Comparing and Contrasting the Criteria

Although the State USF requirements are not as lengthy as the approval criteria for federal ETC designations, the State's COLR requirement makes the intrastate USF approval requirements more stringent than the federal requirements. Current federal requirements do not require carriers receiving federal USF monies to be a COLR. However, in its recent *Recommended Decision* the Joint Board recommended that state commissions harmonize carrier build-out requirements with any existing carrier-of-last resort obligations.²¹ Further, in a separate statement to the *Recommended Decision*, FCC Commissioner Kevin J. Martin asserted that "competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's [FCC's] existing policy of competitive and technological neutrality amongst service providers."²² In the recent *Virginia Cellular* proceeding, FCC Chairman Powell emphasized the requirement that "wireless networks be ready, willing and able to serve as carriers of last resort to support our universal service goals."²³ Commissioner Abernathy echoed the same sentiments urging state commissions to "make certain that an applicant for ETC status is ready, willing, and able to serve as a carrier of last resort."²⁴ Therefore, the FCC acknowledges the importance of a carrier's ability to serve as a COLR. Nevertheless, there is a distinction to be made between having the ability to serve as a COLR and being designated as a COLR by Commission.

²⁰ South Carolina Code of Laws, Title 58, Chapter 9, Article 1, Section 58-9-10 (10).

²¹ *Recommended Decision*, ¶ 27.

²² *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin at 1. The same statement was also made in Dissenting Statements in the *Highland Cellular* and *Virginia Cellular* proceedings.

²³ *Virginia Cellular*, Separate Statement of Chairman Michael K. Powell at 1.

²⁴ *Virginia Cellular*, Separate Statement of Kathleen Q. Abernathy at 1.

III. REVIEW OF PUBLIC POLICY CONSIDERATIONS

Nine public policy considerations are discussed in this study. Although the issues are divided for the purposes of discussion, when analyzing ETC applications, the issues may very well overlap. For example, it is difficult to consider network requirements in isolation of the consideration of service reliability.

A. Approval Criteria for ETC Designations

1. What are the current approval criteria for ETC designations?

As discussed above, the current FCC ETC designation rules require the carrier seeking ETC designation to offer and advertise all of the supported services, and if seeking designation in a rural area, to be in the public interest.

On November 24, 1997, as part of the proceeding that established the intrastate universal service fund in South Carolina, the Commission designated BellSouth Telecommunications, Inc., United Telephone Company of the Carolinas, GTE South Incorporated, and the South Carolina Telephone Coalition Member Companies as ETCs within their respective incumbent local exchange company ("ILEC") service areas.²⁵ In the Order, the Commission granted the designations based on all of the requesting ILECs meeting "all of the Federal eligibility criteria set forth in Section 214(e)(1) of the 1996 Act, with two exceptions."²⁶ Subsequent FCC rulings made the two exceptions moot. Therefore, the approvals of the ETC designations were based solely on the federal criteria in FTA § 214(e)(1).

2. Is the same criteria applicable to wireless carriers seeking ETC designation?

The FCC currently utilizes the criteria in FTA § 214(e) when processing wireless carriers' petitions for ETC designations.²⁷ However, the FCC "fails to require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support."²⁸ The Joint Board recently found that the requirements placed on ILECs "should be imposed on ETCs only to the extent necessary to further universal service goals."²⁹ In its *First Report and Order* in 1997, the Joint Board explained, "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural

²⁵ *Order Designating LECs Telecommunications Carriers*, Order No. 97-958, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, Nov. 24, 1997.

²⁶ *Id.* at 1.

²⁷ See *Federal-State Joint Board on Universal Service; Memorandum Opinion and Order, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Provider in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, (Adpt. Dec. 31, 2003, Rel. Jan. 22, 2004) ("*Virginia Cellular Order*"); See *Federal-State Joint Board on Universal Service; Memorandum Order and Opinion, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, FCC 02-3181 (W.C.B. rel. Nov. 27, 2002) ("*RCC Alabama Order*"); See *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 01-283 (rel. Oct. 5 2001) ("*Pine Ridge Order*"); See *Federal-State Joint Board on Universal Service; Memorandum and Order, Farmers Cellular Telephone, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, DA 03-754 (W.C.B. rel. Mar. 12, 2003) ("*Farmers Alabama Order*"); See *Federal-State Joint Board on Universal Service; Memorandum and Order, Guam Cellular and Paging, Inc. d/b/a Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) ("*Guam Cellular Order*").

²⁸ *Virginia Cellular Order*, at Dissenting Statement of Commissioner Kevin J. Martin.

²⁹ *Recommended Decision*, at ¶ 34.

areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.”³⁰

3. What adjustments, deletions, or additions to the criteria are appropriate?

State commissions are allowed to adopt regulations that are not inconsistent with the FCC’s rules to preserve and advance universal service “to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”³¹ The Fifth Circuit confirmed in *Texas Office of Public Utility Counsel (TOPUC) v. FCC* that “states may establish their own eligibility requirements for ETC applicants” beyond those listed in section 254(b)(1) as part of their ETC designation process.³² This ruling maintains state commissions’ flexibility and ability to consider the specific facts associated with each ETC application.

For example, the Kansas Corporation Commission’s rules require carriers to provide all of the services and facilities that are included in the state’s definition of universal service in order to receive Kansas Universal Support Fund support, with the exception that Commercial Mobil Radio Service (CMRS) providers are not required to provide equal access to long distance services.³³ In addition, in Kansas, “[a]ll residential and single line business lines provided by ETCs in high cost areas are supported by the KUSF. However, in regards to wireless carriers, the Commission allows a maximum of three (3) lines or “units” per household to be KUSF support eligible.”³⁴

In its recent *Recommended Decision*, the Joint Board recommends that state commissions expand the requirement to “offer” the services supported by the federal USF to “require ETC applicants to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service. States should require a demonstration of capability and commitment because this will help them ensure that an ETC applicant is willing and able to provide the supported services throughout the designated service area and to be the sole ETC in a service area if the incumbent LEC [or all other ETC carriers] relinquishes its designation.”³⁵ The *Recommended Decision* provides several examples of state commissions applying this recommendation by evaluating how carriers seeking ETC designation will serve new customers via their own facilities or resale service and requiring the carriers to provide “a formal build-out plan for areas where facilities are not yet built out” as part of the designation approval process.³⁶

³⁰ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Red at 8881-82 (1997) (“*First Report and Order*”).

³¹ 47 U.S.C. § 254(f).

³² *Recommended Decision*, at ¶ 35; See *TOPUC v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

³³ *ETC Fact Sheet*, Kansas Corporation Commission, http://www.kcc.state.ks.us/telecom/etc_facts.htm (Viewed March 27, 2004).

³⁴ *Id.*

³⁵ *Recommended Decision*, at ¶¶ 23, 28.

³⁶ *Id.*, at ¶ 24.

B. Cost Support

1. What is the appropriate amount of cost support?
2. How should wireless carriers seeking ETC designation be required to prove their expenses?

In the *First Report and Order*, the FCC found that the least burdensome way to administer the federal USF would be to calculate an ILEC's per-line support amount based on its embedded costs and provide this per-line amount to all ETCs serving customers within the service territory.³⁷ The FCC also determined that this methodology was appropriate in order not to discourage competition in high-cost areas.³⁸ Therefore, an ILEC's high-cost support is portable to other ETCs, including wireless ETCs. Simply stated, the amount of per line universal service support provided to a competitive ETC, such as a wireless ETC, should be identical to that received by the ILEC.

The FCC acknowledged that "a competitive ETC may have different costs than the incumbent LEC, but explained that competitive ETCs must comply with section 254(e) of the Act, and that section 214(e) requirements would prevent competitive ETCs from profiting by limiting service to low cost areas."³⁹ Additionally, the FCC determined that the alternative, "requiring competitive ETCs to submit forward-looking cost studies without requiring the incumbent LEC's support to be calculated in the same manner, could place either the incumbent LEC or the competitive ETC at a competitive disadvantage."⁴⁰ Therefore, competitive ETCs are not required to prove their expenses. However, as discussed below, competitive ETCs are required to document their use of USF monies.

For areas served by rural carriers, the Joint Board is concerned that funding a competitive ETC based on the ILEC's embedded costs may not be "the most economically rational method for calculating support."⁴¹ However, the Joint Board's recent *Recommended Decision* does not recommend that the FCC modify the methodology used to calculate support in study areas with multiple ETCs. The Joint Board reasoned that it did not "yet have an adequate record to analyze and understand the consequences of recommending a change in the basis of support for areas served by rural carriers that face competition" and will continue to examine this issue in an overall review of high-cost support mechanisms.⁴² This is consistent with the position of FTC Wireless, which claims that the FCC's rules are flawed, allowing "a competitor of a rural telephone company [to receive] universal service funds based on the incumbent carrier's costs."⁴³

The FCC has already given a hint as to the direction it will take in modifying USF support mechanisms. In the *First Report and Order*, the FCC "determined that federal high-cost support for all eligible carriers *eventually* should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported

³⁷ *Id.*, at ¶ 91; *First Report and Order*, 12 FCC Rcd at 8933, 8945, paras. 288, 313.

³⁸ *Id.*, at ¶ 91; *Id.*, at 8934, 8944, paras. 291, 311.

³⁹ *Id.*, at ¶ 91; *Id.*, at 8933, para. 289.

⁴⁰ *Id.*, at ¶ 91; *Id.*, at 8945, para. 313. It does not appear that the FCC considered the alternative of requiring competitive ETCs to submit *embedded* cost studies.

⁴¹ *Recommended Decision*, at ¶ 96.

⁴² *Id.*, at ¶¶ 4, 28, 96.

⁴³ Direct Testimony of Wilmont E. McCuthen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 11.

services.”⁴⁴ [emphasis added] Further, the Joint Board seeks to find mechanisms that ensure the stability of the USF, further the goals of universal service, and “neither incent nor discourage competitive entry.”⁴⁵

3. How would wireless ETCs use the support?

The 1996 Act requires that a carrier receiving federal USF support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴⁶

In its direct testimony filed in the current Commission proceeding, FTC Wireless testified that it would use universal service support to “significantly enhance service in areas already served and expand coverage into unserved areas.”⁴⁷ FTC Wireless explained that there may be variances in signal strength, which can affect call quality, due to heavy foliage and other structural barriers in its current service areas. FTC Wireless asserted that it will utilize high cost support to “deploy needed signal enhancing technology to improve these situations as well as engage in future network upgrades to ensure that rural wireless customers receive the benefits of the latest in broadband wireless capability, similar to the manner in which wireline companies are able to utilize universal service funds to recover the costs of upgrades that enable customers to receive wireless broadband services.”⁴⁸ FTC Wireless indicates that it also plans to use USF monies to expand its emergency restoration capabilities.⁴⁹

In its current Commission proceeding, Hargray Wireless, LLC (Hargray) seeks high-cost support to offer rural customers a competitive option to traditional wireline service. In its application, Hargray “commits to improve service in areas that it would not otherwise invest in” during its first year as an ETC; Hargray describes the improvements as “significant.”⁵⁰

4. Can the Commission direct the use of support?

Clearly, as previously discussed, the Commission can impose additional eligibility conditions on ETCs as part of their designation processes, and thereby specifically direct the use of USF support. The Vermont Public Service Board (“VT PSB”) recently approved a wireless carrier’s petition for ETC designation based on the condition that the carrier’s capital spending in Vermont “be at least equal to its federal support in Vermont, plus a reasonable base level of spending.”⁵¹ The VT PSB also specifically prohibited USF support from being used to cover expenses related to E911 and local number portability (“LNP”) obligations. “However, expenditures made primarily to comply with existing E-911 obligations and expenditures made primarily to comply with number portability requirements should be separately identified and

⁴⁴ *Recommended Decision*, ¶ 89; See *First Report and Order*, 12 FCC Rcd at 8899, para. 224; see also *First Recommended Decision*, 12 FCC Rcd at 230-32.

⁴⁵ *Recommended Decision*, at ¶ 96.

⁴⁶ FTA §254(e)

⁴⁷ Direct Testimony of Wilmont E. McCuthen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 5-6.

⁴⁸ *Id.*

⁴⁹ *Id.*, at 6.

⁵⁰ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 10.

⁵¹ *Order, Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unicef)*, Docket No. 5918, Vermont Public Service Board, November 14, 2003 at 36, 48 (“*Vermont Unicef Order*”). The capital spending total was after deducting expenses for E-911 and LNP obligations.

excluded from current spending, because those expenses arise from sources of law unrelated to universal service.”⁵² The VT PSB reasoned that its restrictions were acceptable since the wireless network is not yet ubiquitous like the wireline network. As a result of the restriction, the regulatory body expected “continual actual improvements in RCC’s signal coverage” and “fewer and smaller “dead spots.”⁵³

The Commission should consider the facts specific to each wireless ETCs circumstances and determine whether specifically directing the use of USF funds would be in the public interest. The Commission may require ETCs to use any percentage, up to 100%, of the universal service support received, for the expansion and upgrading of networks, or any other investment that furthers the goals of universal service and complies with 47 U.S.C. § 254(e).

5. Should the wireless ETC be required to verify that it uses the support appropriately?

In its direct testimony, FTC Wireless asserted that “every universal service dollar will be utilized to advance the provision of service in our service area.”⁵⁴ FTC Wireless explained that it “will apply all the funds to the capital investment and associated expenses required to expand, maintain and enhance service coverage...as well as increase emergency restoration capabilities.”⁵⁵ FTC Wireless added that “if we had not committed both dollars and resources, our rural service area would not have the level of service we provide today much less the quality of service coverage we intend to offer.”⁵⁶

FTC Wireless has also indicated to the Commission that universal service support would not provide it with a windfall; “our mandate requires the utilization of our “profits” to improve the quality of our services and to reduce the costs.”⁵⁷ FTC Wireless continued, “we must annually demonstrate to the Commission that we are properly utilizing universal service funds for the proper purpose. Without the certification of the Commission...we will not receive the funds.”⁵⁸

The required verification of its use of USF funds that FTC Wireless refers to is found in federal statute. Section 254(e) of the FTA requires ETCs to use high-cost support “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁵⁹ ETCs are required under §§ 54.313 and 54.314 of the FCC’s rules to annually certify to the state commission and to the federal USF administrator that it is in compliance with this requirement.⁶⁰

⁵² *Vermont Unicef Order*, at 36, 48.

⁵³ *Id.*, at 37.

⁵⁴ Direct Testimony of Wilmont E. McCuthen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 11.

⁵⁵ *Id.*, at 2.

⁵⁶ *Id.*, at 3.

⁵⁷ *Id.*, at 12.

⁵⁸ *Id.*, at 12.

⁵⁹ 47 U.S.C. § 254(e).

⁶⁰ 47 C.F.R. §§ 54.313, 54.314.

6. Can state commissions require verification beyond the federal requirement?

Several states have ordered ETCs to file additional information or certification separate and in addition to the annual certification filing as part of the designation process. For example, “Virginia Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC.”⁶¹ The Public Service Commission of West Virginia required a competitive ETC “to file annual certifications including the amount of support it received in the year and a statement of how such funds were spent or invested.”⁶² “The Minnesota Public Utilities Commission requires ETCs to file affidavits, additional documentation pertaining to the amount of federal high-cost support received for the prior year, and the ETC’s operational and capital expenditures.”⁶³ Again, the Commission may require ETCs to provide information in addition to the federal annual certification requirement so long as the additional requirements further the goals of universal service and comply with 47 U.S.C. § 254(e). For example, in its order granting ETCs designation, the North Dakota Public Service Commission has ordered applicants to provide quarterly reports regarding its E911 implementation.⁶⁴

In fact, the Joint Board *Recommended Decision* recommends annual certification requirements under FTA § 254(e) and recommends that the FCC “encourage states to use that process to ensure that all ETCs use federal universal service support to provide the supported services and for associated infrastructure costs.”⁶⁵ The Joint Board makes this recommendation to “ensure the accountability of all ETCs for proper use of funds. Annual review provides states the opportunity for periodic review of ETC fund use.”⁶⁶ At the same time, the Joint Board suggests that the state commissions examine ETCs compliance with build-out plans.⁶⁷

Additional information is increasingly important as more competitive ETCs draw from USF monies. While USF support can induce investment in rural and high-cost areas, there is no guarantee that a growing number of customers will be “provided” service upon request in the areas in which service is “offered.” Therefore, through additional certification filings, the Commission must ensure that universal support funds are a catalyst for the growth of service availability in rural and high-cost areas.

⁶¹ *Virginia Cellular Order*, at ¶ 46.

⁶² *Recommended Decision*, at ¶ 47; See *Petition for Consent and Approval for Highland Cellular to be Designated as an Eligible Telecommunications Carrier, in Areas Served by Citizens Telecommunications Company of West Virginia*, Case No. 02-1453-T-PC, *Recommended Decision* at Conclusions of Law para. 30 (Pub. Serv. Comm’n of W.Va. Sept. 15, 2003).

⁶³ *Recommended Decision*, at ¶ 47; See *Midwest Wireless Communications, LLC*, PUC Docket No. PT6153/AM-02-686 at 9 (Minn. PUC March 19, 2003).

⁶⁴ Order, *WWC Holding Co., Inc. Designated Eligible Carrier Application (dbaCellularOne (Western Wireless))*, Case No. PU-2077-03-363, North Dakota Public Service Commission, February 12, 2004, at 9; Order, Case Nos. PU-1226-03-597, PU-386-03-598, PU-897-03-599, PU-1225-03-600; PU-338-03-601; PU-494-03-602, North Dakota Public Service Commission, February 25, 2004 at 14.

⁶⁵ *Recommended Decision*, at ¶¶ 5, 46.

⁶⁶ *Id.*, at ¶ 46; See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432, 20482-83, para. 95 (1999) (*Ninth Report and Order*) (stating that accountability for the use of federal funds in the state ratemaking process is an appropriate mechanism to ensure that non-rural carriers use high-cost support for the provision, maintenance and upgrading of facilities and services for which the support is intended); see also *Rural Task Force Order*, 16 FCC Rcd at 11317-18, para. 187 (anticipating that states would take the appropriate steps to account for the receipt of high-cost support and ensure that federal support is being applied in a manner consistent with section 254).

⁶⁷ *Recommended Decision*, at ¶ 42.

7. Do wireless ETCs really need USF support to provide quality and affordable service?

FTC Wireless' direct testimony indicated that USF support will improve service quality to currently served areas and allow expansion into unserved areas. "High cost support will enable FTC [Wireless] to deploy needed signal enhancing technology to improve these situations as well as engage in future network upgrades to ensure that rural wireless customers receive the benefits of the latest in broadband wireless capability, similar to the manner in which wireline companies are able to utilize universal service funds to recover the costs of upgrades that enable customers to receive wireless broadband services."⁶⁸ "In areas currently unserved, FTC [Wireless] will use high cost support to expand coverage. Many of these areas are sparsely populated and *absent high cost support expanding coverage into these areas will not be economically viable.*"⁶⁹ [emphasis added]

In its pending ETC designation application, Hargray concurs. "In order for Hargray's network to expand into unserved areas, federal high-cost loop funding must be provided so that infrastructure needed to serve remote areas can be fully deployed and competitive service can be delivered."⁷⁰

Many carriers believe that high-cost support is necessary in order to continue progress toward the goal of affordable, nationwide telephone service. In its direct testimony, FTC Wireless stated that the benefits for South Carolina and customers in its rural serving area resulting from universal service support "will be immense."⁷¹ "The very universal service policies that have encouraged and enabled continued advancement in wireline technology...will be applied to foster additional investment in wireless technologies in rural South Carolina."⁷² Moreover, in its application for ETC designation, Hargray stated "it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer."⁷³

Considering the current USF mechanisms and regulations, the Commission's best opportunity to prevent the inefficient use of USF support is to carefully scrutinize, and potentially direct, the planned and actual use of support during, and after, the ETC designation process. Moreover, the Commission must analyze the public interest of all potential ETCs, both rural and non-rural applicants, as discussed later in this paper.

⁶⁸ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 5-6.

⁶⁹ *Id.*, at 6.

⁷⁰ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 7.

⁷¹ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 10.

⁷² *Id.*

⁷³ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 11.

C. Customer Protection

1. Should the Commission impose customer protection standards on wireless ETCs?

In its *Recommended Decision*, the Joint Board asserted that “imposing consumer protection requirements as part of the ETC designation process may be consistent with “the public interest, convenience and necessity” to ensure that consumers are able to receive an evolving level of universal service.”⁷⁴ The *Recommended Decision* clarified that “[a]ny consumer protection requirements imposed on ETCs should further the universal service goals contemplated in section 254(b) of the Act, and should not be imposed merely for the sake of regulatory parity.”⁷⁵

The Joint Board cited the VT PSB’s decision to apply its rules regarding disconnections and customer deposits as a condition of ETC designation.⁷⁶ In Vermont, the wireless ETC was also required to “define the local portion of a customer’s bill as the amount of \$25.00 plus any accumulated local airtime minutes. The \$25.00 charge will be the basis for the calculation of the amount required from a delinquent customer if the customer intends to keep his or her service.”⁷⁷ The carrier retained the authority to restrict these customers’ basic service to a restricted plan that prohibits roaming and toll calling, and “[s]hould a customer insist on a plan that includes roaming and toll services, then RCC [the ETC] may require a larger payment in order for the customer to continue service.”⁷⁸ These conditions were implemented in order to comply with a Vermont rule that requires that a customer cannot be disconnected for nonpayment of charges for toll and optional services.⁷⁹

Similarly, as a condition of receiving ETC designation, the Arizona Corporation Commission required a wireless ETC to submit consumer complaints “arising from its offering as an ETC.”⁸⁰ In addition, as part of its ETC designation process, Virginia Cellular “committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service.”⁸¹

The Commission should consider whether it is appropriate to require a wireless ETC applicant to adopt all or part of its customer relations rules (103-620 through 103-633).⁸² The Commission may also consider whether adoption of the above referenced Cellular

⁷⁴ *Recommended Decision*, at ¶ 31; See 47 U.S.C. § 254(c).

⁷⁵ *Recommended Decision*, at ¶ 31; 47 U.S.C. § 254(b).

⁷⁶ *Recommended Decision*, at ¶ 32; *Vermont Unisel Order* at 74.

⁷⁷ *Vermont Unisel Order*, at 10-11, FOF 41, 42, 43, 44, 45.

⁷⁸ *Id.*

⁷⁹ *Id.*, at 10, FOF 41.

⁸⁰ *Recommended Decision*, at ¶ 32; *Smith Bagley Inc.*, Docket No. T-02556A-99-0207 at p. 12 (Az. Corp. Comm. Dec. 15, 2000) at 14 (“*SBI Arizona Order*”). (finding that Smith Bagley’s ETC designation application should be granted subject to the condition that the carrier submit consumer complaints arising from its offering as an ETC to the Arizona Commission’s Consumer Service Division and provide a regulatory contact).

⁸¹ *Virginia Cellular Order*, at ¶ 30; *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

⁸² S.C. Code of Regulations, Chapter 103, Public Service Commission, Article 6, Telecommunications Utilities, Subarticle 3, Customer Relations.

Telecommunications Industry Association Consumer Code for Wireless Service, or adoption of a similar set of standards created by the Commission, would also be appropriate.

D. Service Reliability

1. Should the Commission examine a carrier's ability to provide service during power outages as part of the ETC designation process?

The Joint Board's recent *Recommended Decision* addresses the issue of service reliability in emergency situations. The Joint Board recommends that state commissions "require ETC applicants to demonstrate the ability to remain functional in emergency situations."⁸³

The Joint Board noted that the VT PSB made a detailed factual finding about an ETC "applicant's technical capabilities to remain functional in emergencies, as well as the applicant's track record for maintaining its network in a power outage."⁸⁴ The VT PSB found that the ETC applicant "uses batteries that provide between two to three hours of back-up power," utilizes "additional power backup from a propane or diesel generator, which extends the power backup to at least 12 hours," and "maintains a large diesel generator at its switch...that will provide up to two days of extended power backup before requiring refueling."⁸⁵ Additionally, the *Recommended Decision* cited a Public Utility Commission of Texas order requiring, as a condition for ETC designation approval, "a minimum of four hours of battery reserve without voltage falling below the level required for proper operation of all equipment."⁸⁶

2. How will the wireless ETC provision emergency service?

3. How will the wireless ETC ensure power supply to its network, including cell towers?

In its pending South Carolina ETC designation proceeding, FTC Wireless asserted that it "maintains conveniently located regional offices to facilitate the provision of service to the public, and its technical personnel are available to deal with emergency situations seven days a week, twenty-four hours a day."⁸⁷ In regard to the provision of emergency service, FTC Wireless testified that it "provides basic 911 services to all if its subscribers and roamers. This critical access to public safety will be made available as service is enhanced in existing service areas and expanded to new areas."⁸⁸ "Additionally, upon the request of Public Safety Answering Points ("PSAPs"), FTC Wireless will provide "Phase 1" and "Phase II" enhanced 911 services ("E911")."⁸⁹

⁸³ *Recommended Decision*, at ¶ 30.

⁸⁴ *Id.*; See *Vermont Unisel Order* at 12-13.

⁸⁵ *Vermont Unisel Order*, at 9, FOF 33, 34, 35.

⁸⁶ *Recommended Decision*, at ¶ 30; See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, PUC Docket No. 22289, SOAH Docket No. 473-00-1167, Order at 25 (Tex. Pub. Util. Comm'n Oct. 30, 2000) ("*Texas WWC Order*").

⁸⁷ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 4, 7.

⁸⁸ *Id.*, at 9.

⁸⁹ *Id.*; Phase 1 will enable the public safety answering point (PSAP) to receive a cell site location and a call back number, along with the voice communication of the wireless 911 call. Phase II will enable the PSAP to identify the caller with a longitude and latitude location.

FTC Wireless states that the equipment and technology it uses to provision wireless services provides for network reliability. "All operating systems are remotely monitored twenty-four hours a day, seven days a week. FTC [Wireless] provides line answering of repair calls on a 24 x 7 basis as well. Each cell site is equipped with backup battery support to provide an average of two hours continuous operation in the event of power interruption. A limited number of portable 13K generators are available to restore sites out due to extended power failures beyond that which can be covered by backup battery support."⁹⁰ Moreover, FTC Wireless states that it "will apply all the [USF] funds to the capital investment and associated expenses required to... *increase emergency restoration capabilities*."⁹¹ [emphasis added]

4. Should the Commission develop wireless network reliability rules or standards for wireless ETCs?

The need for back-up power facilities to maintain the telecommunications network, including 911 services, in the event of sustained power outage, is not unique to the wireless network. The Commission already has a rule regarding emergency operations for telephone utilities which requires carriers to "make reasonable provisions to meet emergencies resulting from failures of lighting or power services, unusual and prolonged increases in traffic, illness of personnel, or from fire, storm, or other acts of God and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunications service."⁹² Subsection B of the Commission's rule further requires that "[e]ach central office shall contain as a minimum two hours of battery reserve. All central offices shall make adequate provisions for emergency power. In offices without installed emergency power facilities, there shall be a mobile power unit available which can be delivered and connected within the period of the battery reserve and can maintain the office for an extended period of time."⁹³

The Commission could easily use its existing rule to create new requirements for ETC applicants. The Commission could also consider requiring carriers to provide, and verify accordance with, a build-out plan that uses universal service support to increase emergency restoration capabilities. If an applicant is unable to adequately sustain its network in the case of a power outage, the Commission is not prohibited from granting its ETC designation. Under § 54.101(c) of the FCC rules, a "state commission may grant the petition of a telecommunications carrier that is otherwise eligible to receive universal service support under §54.201 requesting additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible telecommunications carriers will be permitted to receive universal service support for the duration of the period designated by the state commission."⁹⁴

⁹⁰ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 6.

⁹¹ *Id.*, at 2, 6.

⁹² S.C. Code of Regulations, Chapter 103, Public Service Commission, Article 6, Telecommunications Utilities, Subarticle 4, Engineering, Rule 103-646, Emergency Operation.

⁹³ *Id.*; Subsection C of the rule requires that "In exchanges exceeding 5,000 lines, a permanent auxiliary power unit shall be installed."

⁹⁴ 47 C.F.R. §§ 54.101(c); This should be used for "exceptional" circumstances.

E. Service Quality

1. Is the service quality of wireless service comparable to the service quality of wireline service?

The FCC recognizes the differences between wireline and wireless services and does not require wireless ETCs to provide the same type and quality of services throughout the same geographic area as ILECs.⁹⁵ In fact, the FCC considers the differences between services, such as the size of local calling areas and variety of calling plans, in its public interest analysis.⁹⁶ Further, as discussed in subsection F of this paper, the FCC's rules acknowledge the existence of dead spots.⁹⁷

In a Vermont ETC proceeding, an applicant asserted that it would use "USF subsidies to improve cellular service to communities that have some level of service, but need improved service through added channel capacity."⁹⁸ This is very similar to FTC Wireless' testimony that it would use universal service support to "significantly enhance service in areas already served and expand coverage into unserved areas."⁹⁹ "High cost support will enable FTC [Wireless] to deploy needed signal enhancing technology to improve these situations..."¹⁰⁰

In FTC Wireless' pending South Carolina ETC proceeding, FTC Wireless testified that its "network is designed to meet the highest of industry standards."¹⁰¹ Moreover, FTC Wireless asserted that in addition to meeting general industry standards for service, because FTC Wireless has partitioned spectrum formerly owned by Cingular Wireless, Cingular Wireless requires FTC Wireless to meet "very stringent minimum technical standards designed to guarantee excellent call quality and service particularly relating to percentage of service denied, lost calls, call connect and handoff failures."¹⁰²

2. Should service quality standards be different for wireless and wireline services?

If the Commission is concerned that general industry quality of service standards are inadequate to ensure proper levels of wireless service, it may elect to require ETC applicants to adhere to its existing standards as a part of its public interest evaluation, and as appropriate in advancing the goals of universal service, and ensuring that adequate quality of service is provided to South Carolina's consumers.¹⁰³

⁹⁵ *Virginia Cellular Order*, at Dissenting Statement of Commissioner Kevin J. Martin.

⁹⁶ *RCC Alabama Order*, at ¶24; See *Twelfth Report and Order*, at ¶¶ 56-58; See also *Federal-State Joint Board on Universal Service; Memorandum and Order, Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317 (W.C.B. rel. Dec. 4, 2002) at ¶ 26 ("Cellular South Alabama Order").

⁹⁷ *RCC Alabama Order*, at ¶ 17; See 47 C.F.R. § 22.99; See also *Cellular South Alabama Order*, at ¶ 18.

⁹⁸ *Vermont Unicel Order*, at 7, FOF 12.

⁹⁹ Direct Testimony of Wilmont E. McCuthen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 5-6.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, at 6.

¹⁰² *Id.*, at 7.

¹⁰³ S.C. Code of Regulations, Chapter 103, Public Service Commission, Article 6, Telecommunications Utilities, Subarticle 6 Standards and Quality of Service (103-660 through 103-663.7)

F. Network Issues

1. What type of wireless network and coverage do wireless ETCs need?

Section 214(e)(1) of the FTA requires ETCs to offer support services “throughout the service area for which the designation is received.”¹⁰⁴ [emphasis added] Therefore, ETCs need a network that allows all supported services to be provided to requesting customers throughout its designated service area. The *Vermont Unicel Order* suggested that an ETC “should respond to all reasonable requests from customers by providing sufficient facilities to extend service to the customer at the customer’s billing address or at a different address specified by the customer that represents the customer’s home or work location.”¹⁰⁵

South Carolina statute and rules regarding telecommunications utilities are consistent with the *Vermont Unicel Order*. “Every telephone utility shall provide and maintain facilities and equipment to furnish reasonably adequate and efficient telephone service to its customers in this State.”¹⁰⁶ “The capacity of the utility’s plant shall be sufficiently large to meet all reasonably expected requests for service.”¹⁰⁷ Though the statute and rules are specific to telecommunications utilities, the spirit of the requirements could be readily applied to wireless carriers seeking ETC designation.

The wireless ETC should also maintain a network that complies with current E911 and local number portability standards.¹⁰⁸

2. Are the current wireless systems adequate for ETC designation?

The FCC approved the petition of Cellular South License, Inc. for ETC designation based on their commitment to provide “universal service offering[s] over its wireless network infrastructure using the same facilities it uses to serve its existing customers.”¹⁰⁹ The FCC also approved the petition of Farmers Cellular Telephone, Inc. based on the statement that it provides the supported services “using [its] existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.”¹¹⁰ The FCC found these certifications sufficient to satisfy the requirements of FTA § 214(e)(1)(A).

The FCC determined that “a telecommunications carrier’s inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.”¹¹¹ “To require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective

¹⁰⁴ 47 U.S.C. § 214(e)(1).

¹⁰⁵ *Vermont Unicel Order*, at 38-39.

¹⁰⁶ S.C. Code. Ann. § 58-9-260. Facilities and equipment shall be maintained in adequate manner.

¹⁰⁷ S.C. Code of Regulations, Chapter 103, Public Service Commission, Article 6, Telecommunications Utilities, Subarticle 4 Engineering, Adequacy of Service (103-643).

¹⁰⁸ See *Vermont Unicel Order*, at pp. 41-44.

¹⁰⁹ *Cellular South Alabama Order*, at ¶ 14

¹¹⁰ *Farmers Alabama Order*, at ¶ 10.

¹¹¹ *RCC Alabama Order*, at ¶ 16; See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 at 15175, ¶ 17 (2000) (*Declaratory Ruling*).

entrants from providing telecommunications service.”¹¹² Instead, “a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service.”¹¹³ In this particular proceeding, the applicant committed to improve its network” and stated that “coverage gaps can and will be filled once [the applicant] begins receiving high-cost support.”¹¹⁴

In a Separate Statement to the *Recommended Decision*, Commissioner Kathleen Q. Abernathy states, “[p]erhaps most importantly, the certifying authority should make sure that a prospective ETC has the ability and commitment to build out facilities as necessary to serve the entire designated area.”¹¹⁵ This statement embodies the theme of several ETC designation approval orders – wireless ETC’s current networks are adequate, and to the extent that they are not, wireless ETCs should build out their networks as needed. The network expansion and upgrade, whether moving from analog to digital, upgrading E911 capability, strengthening signal coverage, or otherwise, may be financed with universal support funds. The development and approval of an ETC’s build-out plan reinforces the importance of the state commission ETC designation process.

3. Should the existence of “dead spots” prevent a wireless carrier from receiving ETC designation?

The FCC found that the existence of “dead spots” does not preclude it from granting an ETC designation.¹¹⁶ The FCC’s rules acknowledge the existence of dead spots and define them as “[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service.” Section 22.99 of the FCC’s rules states that “[s]ervice within dead spots is presumed.”¹¹⁷ Additionally, the FCC’s rules provide that “cellular service is considered to be provided in all areas, including dead spots . . .”¹¹⁸

The VT PSB also acknowledged dead spots in the context of an ETC designation. The VT PSB found that “[e]ffective service at a particular location may require some enhanced equipment such as an external fixed antenna on a car or home, a “cell extender,” or a more powerful telephone. Sometimes RCC [the applicant] adjusts its existing antennas or provides a “repeater” to improve service.”¹¹⁹ The VT PSB found that if needed, customers could purchase such equipment at retail.¹²⁰ However, the VT PSB also found that a “number of areas in Vermont have little or no effective cellular service. It is possible that, even with extender devices, one or more municipalities and one or more wire centers within the proposed service

¹¹² *Id.*; See *Id.*, at ¶¶ 12-14. In the *Declaratory Ruling*, the Commission stated that “a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support.” *Id.* at 15173, para. 13. We agree with RCC Holdings that it has been high-cost support that has enabled many rural carriers to extend their networks into high-cost areas. See RCC Holdings Reply Comments at 7; See also *Cellular South Alabama Order*, at ¶ 17.

¹¹³ *Id.*; *Id.*, at ¶ 24.

¹¹⁴ *RCC Alabama Order*, at ¶ 16; RCC Holdings states that it will use any high-cost support it receives “to improve its network and enable Alabama’s rural customers to have a meaningful choice of service providers.” RCC Holdings Reply Comments at 7; See also *Cellular South Alabama Order*, at ¶ 17.

¹¹⁵ *Recommended Decision*, Separate Statement of Commissioner Kathleen Q. Abernathy, at 1.

¹¹⁶ *RCC Alabama Order*, at ¶ 16; See also *Cellular South Alabama Order*, at ¶ 17-18.

¹¹⁷ *Id.*, at ¶ 17; See also *Id.*, at ¶ 18; See 47 C.F.R. § 22.99.

¹¹⁸ *Id.*; See also *Id.*; See 47 C.F.R. § 22.911(b).

¹¹⁹ *Vermont Unicef Order*, at 7, FOF 13.

¹²⁰ If such equipment is needed in the State of South Carolina, the Commission is not prohibited from requiring the ETC to purchase such equipment with its universal service support and provide such equipment to consumers at no cost. This is arguably consistent with the goals of the FTA to preserve and advance universal service. The VT PSB reasoned that charging consumers for such equipment is effectively the same as wireline providers charging for line extensions.

area have no coverage.”¹²¹ Despite these circumstances, the ETC designation was granted.

4. Should the wireless ETC’s network be required to allow the provision of service to all requesting customers?

In regard to the provision of service to all requesting customers, as part of Virginia Cellular’s ETC designation approval, the FCC recently required that “[i]n instances where a request comes from a potential customer within Virginia Cellular’s licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) the requesting customer’s equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier’s facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service. In addition, if after following these steps, Virginia Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission [FCC] detailing how many requests for service were unfulfilled for the past year.”¹²²

At a minimum, the Commission should consider requiring ETCs to annually report how many requests were unfulfilled in order to evaluate the adequacy of the carrier’s services and build out plans. It cannot be stressed enough that the universal support should result in a growing number of customers being “provided” service upon request in the areas in which service is “offered.”

G. Local and Unlimited Calling

1. Is local calling required for wireless ETC designation?

Although the FCC has not set a minimum local usage requirement for ETCs, the FCC has determined that ETCs should provide some minimum amount of local usage as part of their “basic service” package of supported services.¹²³ The FCC’s direction does not get more specific. The FCC has granted multiple wireless ETC designations based on the assertion that the wireless company “will comply with any and all minimum local usage requirements adopted by the FCC” and “will meet the local usage requirement by including a variety of local usage plans as part of a universal service offering.”¹²⁴ The FCC found this commitment to be sufficient, and further stated that the company “is not required to provide a detailed description of its planned universal service offerings beyond its commitment to provide, or statement that it is now providing, all of the services supported by the universal service support mechanism.”¹²⁵

¹²¹ *Vermont Unicef Order*, at 7, FOF 14.

¹²² *Virginia Cellular Order*, at ¶ 15.

¹²³ *RCC Alabama Order*, at ¶ 19; *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8813, para. 67 (1997) (subseq. history omitted). Although the Commission’s rules define “local usage” as “an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users,” the Commission has not specified a number of minutes of use. *See* 47 C.F.R. § 54.101(a)(2); *See also Farmers Alabama Order*, at ¶ 9.

¹²⁴ *RCC Alabama Order*, at ¶ 19; *See also Cellular South Alabama Order*, at ¶ 19.

¹²⁵ *Id.*; *See also Id.*, at ¶ 18.

2. How much local calling is required for wireless ETC designation?

The Joint Board suggests that consistent with the requirement that ETCs offer some minimum amount of local usage, state commissions “may consider how much local usage ETCs should offer as a condition of federal universal service support.”¹²⁶ The Joint Board added that “there is nothing in the Act, Commission’s rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.”¹²⁷ In its pending petition for ETC designation in South Carolina, FTC Wireless explains that it “offers a variety of monthly service plans which include varying amounts of local and long distance calling for a flat rate, covering various geographic areas.”¹²⁸

In its *Recommended Decision*, the Joint Board suggested that when “considering local usage, states may choose to compare an incumbent LEC’s offering of a local calling plan to the local calling plan proposed by the ETC applicant.”¹²⁹ The *Recommended Decision* cites an Arizona Corporation Commission order in which it “compared the ETC applicant’s calling plan with that of the landline service offerings and determined that based on the size of the calling area, toll calling on the ETC applicant’s network would cost the same, or less, as it would on the incumbent LEC’s network.”¹³⁰ The *Recommended Decision* explained that the Arizona Corporation Commission “also considered the applicant’s plan to provide unlimited free calls to a long list of government, social service, health facilities, educational institutions, and emergency numbers.”¹³¹

3. Is unlimited local calling required for wireless ETC designation?

4. What constitutes unlimited local calling on the wireless network?

The FCC neither requires wireless ETCs to offer unlimited calling, nor does it prohibit unlimited calling.¹³² The FCC has granted ETC designation to applicants not offering and not planning to offer unlimited calling. In fact, while determining that “unlimited local usage should not be added to the list of services supported by federal universal service, the Commission [FCC] found that the states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances.”¹³³

The Utah Public Service Commission granted the ETC designation of Western Wireless on the condition that it offer “unlimited local usage as part of the universal service offering package that covers, at a minimum, all areas currently covered by the incumbent local exchange provider on an individual calling area basis. Western Wireless may offer larger free unlimited local calling areas.”¹³⁴ In Wyoming, a wireless carrier is not eligible for ETC

¹²⁶ *Recommended Decision*, at ¶35.

¹²⁷ *Id.*

¹²⁸ *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, May 13, 2003, at 5.

¹²⁹ *Recommended Decision*, ¶ 36.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² In the proceeding granting Farmers Cellular Telephone, Inc.’s ETC designation in Alabama, Farmers Cellular Telephone, Inc. certified, “that it currently offers several service options including varying amounts of local usage, as well as a service that includes unlimited local usage.” *Farmers Alabama Order*, at ¶ 9.

¹³³ *Recommended Decision*, at ¶ 35; *See Definitions Order*, 18 FCC Rcd at 15096, para. 14.

¹³⁴ Report and Order, *Petition of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 98-2216-01, July 21, 2000, at Ordering Para. 2.

designation unless it will provide unlimited local calling throughout an entire local exchange area.¹³⁵

The Commission is not prohibited from creating a requirement that ETCs provide an unlimited local usage offering if it is found to further the goals of universal service in South Carolina. However, the Commission must consider and balance the characteristic of each type of service. Although most wireline service plans provide unlimited calling, wireless service plans should not necessarily be required to offer unlimited local calling. Wireless service plans may offer benefits that wireline services plans do not, such as a larger local calling area and lower toll charges. Further, unlimited local usage is not prevalent in the variety of service plans offered in today's urban wireless service plans. Therefore, it could be assumed that consumers are not demanding such plans in the competitive market.

H. Future Federal or State Regulations

1. Should the Commission require wireless ETCs to abide by future federal and state rules?

In its direct testimony, FTC Wireless asserted that it would “meet whatever minimum usage requirements that may subsequently be adopted by the FCC or this Commission.”¹³⁶ FTC Wireless stated that it “fully understands that it must comply with the [future FCC rule] changes or lose the ETC status it seeks.”¹³⁷

The Commission should require all ETCs to affirm that they will abide by future rules and rule revisions on state and federal levels. Annual ETC filings will provide an opportunity for the Commission to incorporate any new or revised requirements.

I. Public Interest

1. Is the Commission required to examine the public interest of wireless ETC designations in non-rural serving areas?

Clearly, for rural and non-rural service areas alike, the public interest of an applicant's ETC designation must be analyzed in a manner that is consistent with the purposes and goals of the FTA. The FCC recently stated that it does not believe that “designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance.”¹³⁸ A more detailed public interest analysis, like that discussed below for rural ETC designations, is warranted.

¹³⁵ Wyoming Public Service Commission Rules of Practice and Procedure, §37-15-502(a)(ii).

¹³⁶ Direct Testimony of Wilmont E. McCuthen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 4.

¹³⁷ *Id.*, at 13.

¹³⁸ *Virginia Cellular Order*, at ¶ 27.

2. Is the Commission required to examine the public interest of wireless ETC designation in rural serving areas?

The *Recommended Decision* interprets “section 214(e)(2) as contemplating use of a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers.”¹³⁹ Moreover, the Joint Board finds that “section 214(e)(2) provides the state commissions with the obligation and statutory duty to perform an in-depth public interest analysis concerning ETC applications in rural carrier study areas.”¹⁴⁰

The *Recommended Decision* examines the various analyses utilized by state commissions and the FCC to “address various factors affecting the public interest,” including “benefits of increased competition and choice and potential harm to consumers.”¹⁴¹ The Joint Board believes that the public interest is best served by considering both the benefits and costs related to the specific facts in an ETC application, rather than applying a rigid standard.¹⁴²

As previously discussed, FTA § 214(e)(2) states: “[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”¹⁴³ The Joint Board asserted that the public interest statutory requirement in FTA § 214(e)(2) “demonstrates Congress’s intention that state commissions evaluate local factual situations in ETC cases and exercise broad discretion in reaching their ultimate conclusion regarding the public interest, convenience and necessity. This view is also consistent with the ruling of the Fifth Circuit in *TOPUC v. FCC*, which held that states may impose their own eligibility requirements beyond those listed in section 254(b)(1).”¹⁴⁴

3. What has the FCC considered when examining the public interest of wireless ETC designations?

Recently, the FCC provided a general framework for evaluating the public interest of an ETC designation in rural areas. The FCC ordered that the framework apply to all rural ETC designations pending further action by the FCC, and presumably, state commissions. Though the FCC stressed that analyzing the public interest of an ETC applicant is a fact-specific process, when weighing the potential costs against the potential benefits, the FCC and state commissions shall consider: “the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time frame.”¹⁴⁵

The FCC also concluded “the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”¹⁴⁶

¹³⁹ *Recommended Decision*; at ¶ 38; 47 U.S.C. § 214(e)(2).

¹⁴⁰ *Id.*

¹⁴¹ *Recommended Decision*, at ¶ 37.

¹⁴² *Id.*, at ¶ 42.

¹⁴³ *Recommended Decision*, at ¶ 7; 47 U.S.C. § 214(e)(2).

¹⁴⁴ *Recommended Decision*, at ¶ 15; See *TOPUC v. FCC*, 183 F.3d at 418.

¹⁴⁵ *Virginia Cellular Order*, at ¶ 4.

¹⁴⁶ *Virginia Cellular Order*, at ¶ 4.

4. What have other state commissions considered when examining the public interest of wireless ETC designations?

The Minnesota Public Utilities Commission used a balancing test, weighting the public costs against the public benefits, “in its analysis of Minnesota Cellular’s application for ETC designation, determining that petitioner had produced credible evidence of its intent and ability to offer service and the benefits to Minnesota customers.”¹⁴⁷

In determining the public interest, the Regulatory Commission of Alaska has considered “new choices for customers; affordability; quality of service; service to unserved customers; comparison of benefits to public cost; and considerations of material harm.”¹⁴⁸ Similarly, the FCC has examined “whether consumers were likely to benefit from increased competition; whether the additional designation will provide benefits not available from incumbent carriers; whether consumers may be harmed should the incumbent withdraw from the service area; and whether there would be harm to a rural incumbent LEC.”¹⁴⁹

The Texas Public Utility Commission’s public interest test is “guided by the fundamental goals of preserving and advancing universal service, and the component goals of ensuring the availability of quality telecommunications services at just, reasonable and affordable rates, and promoting the deployment of advanced telecommunications and information services to all regions of the Nation, including rural and high-cost areas.”¹⁵⁰

5. What other factors should the Commission consider in its public interest analysis of wireless ETC designations?

a. Applicability to the State Universal Service Fund

As discussed above in Section II-B, and further in Appendix B, the State of South Carolina General Assembly adopted a statute in 1996 that directed the Commission to establish a State USF for the distribution of support to carriers of last resort. To the extent that an eligibility test is required for receipt of funds from the State USF, the Commission must consider the need for consistency between the federal and state fund requirements. One significant issue to be addressed is the requirement for an eligible carrier to be a “carrier of last resort”, and whether a similar requirement may or should be imposed on ETC applicants.

b. Benefits of Increased Customer Choice

The FCC found that the designation of wireless competitive carriers as ETCs “may provide benefits to rural consumers that are not available from the incumbent carriers” including larger local calling areas and variety of calling plans; “such options may make intrastate toll calls more affordable to those consumers.”¹⁵¹

¹⁴⁷ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 8-9; See *Minnesota Cellular Corporation*, Docket No. P5695/M-98-1285 at pp. 16-18 (Minn. PUC Oct. 27, 1999).

¹⁴⁸ *Recommended Decision*, at ¶40.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, at ¶ 39; See also 47 U.S.C. § 254.

¹⁵¹ *RCC Alabama Order*, at ¶24; See *Twelfth Report and Order*, at ¶¶ 56-58; See also *Cellular South Alabama Order*, at ¶

In its direct testimony, FTC Wireless explained that after receiving ETC designation, “[c]ustomers in rural and high-cost areas will receive the direct benefits of increase choices of telecommunications services, innovative services, and new technologies.”¹⁵²

In its application, Hargray explains that “[m]any residents of South Carolina live in remote areas where it is cost-prohibitive to provide competitive wireline telecommunications services. As a result, customers generally have only one service provider from which to choose. Hargray seeks to offer citizens of South Carolina its service as an alternative to traditional wireline service.”¹⁵³ Therefore, by granting Hargray’s application for ETC designation, the Commission “will expedite the provision of competitive telephone service to the people living in those remote areas and provide a meaningful choice for many subscribers who have access to only one service provider.”¹⁵⁴

c. Health and Safety Benefits

In its direct testimony, FTC Wireless asserted that “public safety benefits will accrue as FTC [Wireless] expands its network” as a result of universal service support.¹⁵⁵ The benefits will be the result of FTC Wireless offering “critical access to public safety” to its customers and roamers.¹⁵⁶

In its petition, Hargray explained that in order for enhanced 911 services to benefit customers, there must be adequate cell towers to provide the needed radio frequency that permits a caller to make an emergency call and then be located and tracked. Hargray states that ETC designation will provide funds to invest in this critical infrastructure.¹⁵⁷

The Arizona Corporation Commission found that competitive ETCs may be a potential solution to the “health and safety risks associated with geographic isolation.”¹⁵⁸

d. Benefits of Competitive Response

“Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer’s business. There is no question that if Hargray is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs. Service quality and customer service will improve. New investments in plant will be made. High-speed data (DSL) may be deployed more quickly to retain and attract customers. Wider local calling areas, bundled service offerings, and lower prices over all...”¹⁵⁹

¹⁵² Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 8.

¹⁵³ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 6-7.

¹⁵⁴ *Id.*, at 7.

¹⁵⁵ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 9.

¹⁵⁶ *Id.*

¹⁵⁷ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 11.

¹⁵⁸ *Id.*; See *SBI Arizona Order*, at 12.

¹⁵⁹ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 12.

In its application for ETC designation in South Carolina, Hargray stated that it found “no merit to the contention that designation of an additional ETC in areas serviced by rural telephone companies will necessarily create incentives to reduce investments in infrastructure, raise rates, or reduce service quality to customers in rural areas. To the contrary, we [Hargray] believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.”¹⁶⁰

That said, the FCC has ruled that competition alone is not enough to prove the public interest of a competitive ETC.¹⁶¹

e. Impact on USF

The *Recommended Decision* states that state commissions “making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs.”¹⁶² The Joint Board explains that “[i]f the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.”¹⁶³ Hargray disagrees, asserting that when determining whether approval is in the public interest, the Commission should not consider the potential growth in the federal USF. Hargray cites the FCC’s refusal to consider the growth of the fund in the context of an individual company’s application for ETC status.¹⁶⁴

The FCC explains that since the “federal universal service support mechanisms support all lines served by ETCs in rural and high-cost areas” a wireless competitive ETC’s “receipt of high-cost support will not affect the per-line support amount that the incumbent carrier receives.”¹⁶⁵ Therefore, to the extent that a wireless competitive ETC “provides new lines to currently unserved customers or second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.”¹⁶⁶ The wireless competitive ETC will neither harm the affected LECs nor undermine the FCC’s policy of promoting competition.

f. ETC’s Finances

In its recent *Recommended Decision*, the Joint Board suggested that state commissions evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area. The Joint Board stated that it would “neither be prudent nor serve the public interest if a financially unsound carrier is designated as an ETC,

¹⁶⁰ *Id.*; See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Red at 57 (2000) (“*Western Wireless Wyoming Order*”); See also *RCC Minnesota, Inc.*, Docket No. UT-023033 (Wash. Util. & Transp. Comm. Aug. 14, 2002), at pp. 16-17 (“*RCC Washington Order*”).

¹⁶¹ *Virginia Cellular Order*, at 3.

¹⁶² *Recommended Decision*, at ¶ 43.

¹⁶³ *Id.*

¹⁶⁴ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003, at 9; See *RCC Holdings, Inc.* DA 02-3181 (W.C.B. rel. Nov. 27, 2002) at ¶ 32.

¹⁶⁵ *RCC Alabama Order*, at ¶ 26; See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, paras. 136-164 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001); See also *Cellular South Alabama Order*, at ¶ 28.

¹⁶⁶ *RCC Alabama Order*, at ¶ 26.

receives universal service support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations.”¹⁶⁷

g. Miscellaneous Considerations

The FCC found that wireless ETCs benefit rural consumers by “providing greater mobility and a choice of service providers to consumers in high-cost and rural areas”¹⁶⁸ “The mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.”¹⁶⁹

The VT PSB found that “signal coverage is relevant to whether certification is consistent with the public interest, convenience, and necessity.”¹⁷⁰

Lastly, obvious benefits are provided to customers by a competitive ETC in situations where customers do not have access to a wireline telephone.¹⁷¹

6. Has the FCC or a state commission found a wireless ETC not to be in the public interest? If so, why?

In the *Virginia Cellular Order*, the FCC denied in part the ETC designation in a rural area for the following reasons. “Virginia Cellular’s licensed CMRS area covers only the Waynesboro wire center in NTELOS’ study area. Based on our [the FCC] examination of the population densities of the wire centers in NTELOS’ study area, we find that Waynesboro is the lowest-cost, highest-density wire center in the study area of NTELOS, and that there is a great disparity in density between the Waynesboro wire center and the NTELOS wire centers outside Virginia Cellular’s service area. The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS’ study area is approximately 33 persons per square mile. Universal service support is calculated on a study-area-wide basis. Although NTELOS did not take advantage of the Commission’s [FCC] disaggregation options to protect against possible uneconomic entry in its lower-cost area, we [the FCC] find on the facts here that designating Virginia Cellular as an ETC only for the Waynesboro wire center could potentially significantly undermine NTELOS’ ability to serve its entire study area. The widely disparate population densities in NTELOS’ study area and the status of Waynesboro as NTELOS’ sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage.”¹⁷² In addition, the FCC found that “if NTELOS had disaggregated, the low costs of service in the Waynesboro wire center would have resulted in little or no universal service support targeted to those lines.”¹⁷³ Therefore, the FCC’s decision not to designate Virginia Cellular as an ETC in the study area of NTELOS “is unlikely to impact consumers in the Waynesboro wire center because Virginia Cellular will make a business decision on whether to provide service in that area without regard to the potential receipt of universal service support.”¹⁷⁴

¹⁶⁷ *Recommended Decision*, at ¶ 22.

¹⁶⁸ *Virginia Cellular Order*, at 7.

¹⁶⁹ *Id.*, at ¶ 29.

¹⁷⁰ *Vermont Unicef Order*, at 27.

¹⁷¹ *See Virginia Cellular Order*.

¹⁷² *Id.*, at ¶ 35.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

The FCC also denied in part the ETC designation of Highland Cellular. The FCC did not grant Highland Cellular ETC status in part of its requested rural service area because of cream skimming concerns similar to that discussed above in the *Virginia Cellular Order*.¹⁷⁵ The FCC also determined that “prior to designating an additional ETC in a rural telephone company’s service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area,” which the FCC determined to be a rural telephone company’s wire center.¹⁷⁶ Highland Cellular previously stated that it would not seek designation in part of its rural service area if the FCC required competitive ETCs to serve complete rural telephone company wire centers.

The Utah Public Service Commission (“UPSC”) rejected a request of ETC designation for a wireless carrier in a rural area on grounds of not being in the public interest. The UPSC found that it was not in the public interest to add a second ETC because of the possible negative impact on the state’s USF. “Such a situation would cause a significant increase in the burdens placed upon the State Fund (i.e., all Utah telecommunications customers) without corresponding public benefits.”¹⁷⁷ However, the UPSC suggested that if the applicant was willing to provide service in the areas of the state within the applicant’s signal coverage that are not currently served by any telecommunications corporation, that it would be willing to designate the applicant as an ETC in order to “advance universal service by bringing telecommunications services to Utah’s unserved rural citizens.”¹⁷⁸

¹⁷⁵ *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order, Petition of Highland Cellular, Inc. for Designation as an Eligible Telecommunications Provider in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37, adopted February 24, 2004 at ¶ 31.

¹⁷⁶ *Id.*, at ¶ 33; “We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date.”

¹⁷⁷ Report and Order, *Petition of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 98-2216-01, July 21, 2000, at 11.

¹⁷⁸ *Id.*

Appendix A

FTC COMMUNICATIONS, LLC PETITION FOR ETC DESIGNATION

Docket No. 2003-158-C

FTC Communications, Inc. d/b/a FTC Wireless (FTC Wireless) is a wireless carrier that has been providing Personal Communications Services (PCS) to several counties in South Carolina since 1997.¹⁷⁹ FTC Wireless' parent company, Farmers Telephone Cooperative, has provided wireline service to rural areas in South Carolina for over fifty-two years.¹⁸⁰ On May 13, 2003, FTC Wireless filed its petition for designation as an ETC in all areas of the state of South Carolina that it serves. FTC Wireless asserted that its petition demonstrated its current or future compliance with the FCC's certification rules.¹⁸¹ In its petition, FTC Wireless stated that ETC designation was in the public interest because "consumers in rural and high-cost areas will receive the direct benefits of increased choices of telecommunications services, innovative services, and new technologies."¹⁸²

On September 19, 2003, the South Carolina Telephone Coalition (SCTC) filed a Motion for Continuance requesting that the Commission continue FTC Wireless' scheduled hearing until the Commission issued an order ruling in Docket No. 2003-151-C, Application of ALLTEL Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934; that the Commission vacate the Scheduling Order¹⁸³ in the FTC Wireless proceeding; and that the Commission issue a new order once a new hearing date has been established.¹⁸⁴ The SCTC claimed that the many of the same issues were being addressed in both the ALLTEL and FTC Wireless proceedings. The SCTC asserted that "presentation and consideration of those [FTC Wireless'] issues when the ALLTEL decision is still pending would be unnecessarily duplicative."¹⁸⁵ FTC Wireless' Application seeks designation as an ETC in certain wire centers that are identical to those that were at issue in the ALLTEL proceeding.¹⁸⁶

On September 22, 2003, in response to the SCTC's Motion for Continuance, FTC Wireless, and its parent company Farmers Telephone Cooperative, opposed the motion, asserting that it was against the public interest and harmed the interests of the rural subscribers served by FTC Wireless.¹⁸⁷ The response also differentiated FTC Wireless' petition from the ALLTEL proceeding.¹⁸⁸ FTC Wireless' "request for ETC status is different from that of ALLTEL in that ETC status is being sought only in the FTC

¹⁷⁹ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003, at 2.

¹⁸⁰ *Id.*

¹⁸¹ 47 U.S.C. § 214(e)(2).

¹⁸² *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, May 13, 2003, at 5.

¹⁸³ *Order Establishing Prefiling Deadlines*, Order No. 2003-471, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, August 5, 2003.

¹⁸⁴ Motion for Continuance, South Carolina Telephone Coalition, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 19, 2003; The ALLTEL proceeding is discussed in Appendix B of this paper.

¹⁸⁵ *Id.*, at 2.

¹⁸⁶ Order Continuing Hearing, Vacating Scheduling Order, and Ordering Study, Order No. 2003-591, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, October 20, 2003, at 1.

¹⁸⁷ FTC and FTCC's Return to Motion for Continuance of SCTC, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 22, 2003, at 1-2.

¹⁸⁸ *Id.*

service area” - the rural service area of its affiliate and owner.¹⁸⁹ Moreover, FTC Wireless argued that its consideration “should not be delayed by the Commission’s consideration of other applications” and that its “application presents a very distinct set of facts to be considered.”¹⁹⁰

FTC Wireless witness Wilmot McCutchen filed direct testimony in the proceeding on September 25, 2003. In his testimony, Mr. McCutchen discussed how FTC Wireless would utilize the high-cost support, FTC Wireless’ network reliability, FTC Wireless’ service quality, the public interest of FTC Wireless’ ETC designation, and other benefits made available to South Carolina consumers through FTC Wireless’ ETC designation.¹⁹¹

On October 20, 2003, in response to the SCTC’s Motion for Continuance, the Commission issued Order No. 2003-591, Order Continuing Hearing, Vacating Scheduling Order, and Ordering Study. The Order reasoned that since many of the issues in the FTC Wireless proceeding may be addressed in an ALLTEL proceeding, that the FTC Wireless hearing, and essentially the proceeding, would be delayed until the Commission rendered a decision in the ALLTEL proceeding.¹⁹²

On March 23, 2004, FTC Wireless filed a Petition to Partially Rescind and Amend Order of Commission Dated October 20, 2003.¹⁹³ FTC Wireless’ Petition reasoned that since the Commission had approved ALLTEL’s withdrawal of its ETC petition in Docket No. 2003-151-C, that the Commission should move forward with the FTC Wireless proceeding.¹⁹⁴ FTC Wireless’ Petition further reasoned that the Study ordered by the Commission was no longer needed due to recent decisions in the Joint Board *Recommended Decision* and the *Virginia Cellular Order*.¹⁹⁵ FTC Wireless asserted that its original Petition for ETC Designation complied with the criteria used in the *Virginia Cellular Order* and that recommended in the Joint Board *Recommended Decision*.¹⁹⁶ At the time of this study, the Commission had not responded to FTC Wireless’ March 23, 2004 Petition.

The Commission linked the procedural outcome of the FTC Wireless proceeding to another pending wireless ETC proceeding.¹⁹⁷

¹⁸⁹ *Id.*; Order Continuing Hearing, Vacating Scheduling Order, and Ordering Study, Order No. 2003-591, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, October 20, 2003, at 2.

¹⁹⁰ FTC and FTCC’s Return to Motion for Continuance of SCTC, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 22, 2003, at 2.

¹⁹¹ Direct Testimony of Wilmont E. McCutchen, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, September 25, 2003.

¹⁹² Order Continuing Hearing, Vacating Scheduling Order, and Ordering Study, Order No. 2003-591, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, October 20, 2003.

¹⁹³ FTC Petition to Partially Rescind and Amend Order of Commission Dated October 20, 2003, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, March 23, 2004.

¹⁹⁴ Order Granting Motion to Withdraw Application, Order No. 2003-702, *Application of ALLTEL Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934*, Docket No. 2003-151-C, December 8, 2003.

¹⁹⁵ See *Virginia Cellular Order*; See *Recommended Decision*; Both Orders are discussed in Appendix C of this paper.

¹⁹⁶ FTC Petition to Partially Rescind and Amend Order of Commission Dated October 20, 2003, *Petition of FTC Communications, Inc d/b/a FTC Wireless for Designation as an Eligible Telecommunications Company in the State of South Carolina*, Docket No. 2003-158-C, March 23, 2004, at 3.

¹⁹⁷ Order, Order No. 2003-640, *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, October 23, 2003.

Appendix B

OTHER SOUTH CAROLINA USF PROCEEDINGS

Docket No. 1997-239-C

Proceeding to Establish Guidelines for Intrastate Universal Service Fund

In 1996, the State of South Carolina General Assembly adopted a statute that directed the Commission to establish a State USF for the distribution of support to carriers of last resort.¹⁹⁸ The statute reads:

“(E) In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort. The commission shall issue its final order adopting such guidelines as may be necessary for the funding and management of the USF within twelve months of the effective date of this section except that the commission, upon notice, may extend that period up to an additional ninety days. These guidelines must not be inconsistent with applicable federal law and shall address, without limitation, the following:

(1) The USF shall be administered by the commission or a third party designated by the commission under guidelines to be adopted by the commission.

(2) The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.

(3) The commission also shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.

(4) The size of the USF shall be determined by the commission and shall be the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for the services. The commission may use estimates to establish the size of the USF on an annual basis, provided it establishes a mechanism for adjusting any inaccuracies in the estimates.

(5) Monies in the USF shall be distributed to a carrier of last resort upon application and demonstration of the amount of the difference between its cost of providing basic local exchange services and the maximum amount it may charge for such services.

(6) The commission shall require any carrier of last resort seeking reimbursement from the fund to file the information necessary to determine the costs of providing basic local exchange telephone services. In the event that a carrier of last resort does not currently conduct detailed cost studies relating to such services, the commission shall allow for an appropriate surrogate for such study.

(7) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed.

(8) After notice and an opportunity for hearing to all affected carriers, the commission by rule may expand the set of services within the definition of universal service based on a

¹⁹⁸ Order on Universal Service Fund, Order No. 2001-419, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C June 6, 2001, at 31; S.C. Code. Ann. § 58-9-280(E) (May 1996).

finding that the uniform statewide demand for such additional service is such that including the service within the definition of universal service will further the public interest; provided, however, that before implementing any such finding, the commission shall provide for recovery of unrecovered costs through the USF of such additional service by the affected carrier of last resort.

(9) Nothing in subsection (G) of this section shall preclude the commission from assessing broadband service revenues for purposes of contributions to the USF, pursuant to this subsection.”¹⁹⁹

On May 27, 1997, in response to the General Assembly’s directive, the Commission opened a proceeding regarding the establishment of a State USF. The Commission asserted that a State USF was essential “to remove implicit support from rates and make the funding explicit.”²⁰⁰

On September 3, 1997, the Commission issued an order providing guidelines for the establishment of the State USF.²⁰¹ On November 24, 1997, the Commission designated BellSouth Telecommunications, Inc, United Telephone Company of the Carolinas, GTE South Incorporated, and the South Carolina Telephone Coalition Member Companies as ETCs within their respective incumbent local exchange company (LEC) service areas.²⁰² On December 31, 1997, the Commission issued an order addressing three petitions for reconsideration related to the Commission’s September order.²⁰³ On May 6, 1998, the Commission determined the appropriate cost model to be utilized in developing the State USF.²⁰⁴

On February 23, 2000, the Commission scheduled a formal hearing in July 2000 in an effort to proceed with the implementation of the State USF.²⁰⁵ The original hearing, scheduled in April 1999, was postponed to allow time for the FCC to issue its decision on the federal high cost support for non-rural carriers.²⁰⁶

On June 6, 2001, the Commission issued an order responding to parties’ proposals and clarifying the Commissions’ position on several issues previously considered and decided in the proceeding.²⁰⁷ On August 31, 2001, the Commission issued an order addressing several petitions for clarification or reconsideration related to the June 2001 Order.²⁰⁸ On October 10, 2001, the Commission approved the State USF guidelines and administrative procedures.²⁰⁹

¹⁹⁹ S.C. Code. Ann. § 58-9-280(E) (May 1996).

²⁰⁰ *Id.*, at 32.

²⁰¹ Order Addressing the Universal Service Fund, Order No. 97-753, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, September 3, 1997.

²⁰² Order Designating LECs Telecommunications Carriers, Order No. 97-958, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, November 24, 1997; The Commission issued an additional Order designating GTE South, Inc. as an ETC according to new FCC ETC designation requirements, thereby making the previous waiver unnecessary, on December 23, 1998, Order No. 98-1028.

²⁰³ Order Granting in Part and Denying in Part Petitions, Order No. 97-942, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, December 31, 1997.

²⁰⁴ Order on Universal Service Cost Models, Order No. 98-332, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, May 6, 1998.

²⁰⁵ Order Implementing Procedure on Intrastate Universal Service Fund, Order No. 2000-117, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, February 23, 2000 at 1.

²⁰⁶ Order Granting Postponement, Order No. 1999-221, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, March 26, 1999.

²⁰⁷ Order on Universal Service Fund, Order No. 2001-419, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C June 6, 2001.

²⁰⁸ Order on Reconsideration, Order No. 2001-704, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, August 31, 2001.

²⁰⁹ Order Approving Final Documents and Vacating Order No. 2001-954, Order No. 2001-996, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, October 10, 2001.

In September 2002, the Commission stayed the State USF proceeding pursuant to a ruling by the Honorable Ernest J. Kinard, Judge of the Fifth Judicial Circuit.²¹⁰ In November 2002, the stay was lifted and a new procedural schedule set.²¹¹ In April 2003, the Commission approved an increase in the monthly USF surcharge percentage to allow for the inclusion of additional rate adjustments by six local exchange carriers.²¹²

The State USF proceeding remains open as the Commission follows its phase-in plan.²¹³ The Commission found that a “phase-in approach to implementing State USF will allow the Commission to break down implementation into a manageable process, allowing for a closer observation of its impact on consumers.”²¹⁴

The State USF benefits rural areas by advancing universal service and benefits rural customers by providing an incentive for competitive carriers to provide service in those areas.²¹⁵

Docket No. 2003-151-C

Application of ALLTEL Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934

On April 29, 2003, ALLTEL Communications, Inc. (ALLTEL) filed its application for designation as an ETC throughout the State of South Carolina in Docket No. 2003-151-C. ALLTEL amended its application on July 2, 2003. The Commission held a hearing in this proceeding during September 2003, however, a Commission decision was not ordered prior to ALLTEL filing a motion to withdraw its application, on October 31, 2003.²¹⁶ Order 2003-702, filed on December 8, 2003, granted ALLTEL’s motion to withdraw its application on the condition that it would not re-petition the Commission for ETC designation within 12 months.²¹⁷

²¹⁰ Order Staying Proceeding and Requiring Return of Testimony, Order No. 2002-644, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, September 9, 2002. The testimony was later re-filed according to Order No. 2003-692, December 8, 2003.

²¹¹ Order Lifting Stay, Setting Hearing And Establishing Prefiling Dates, Order No. 2002-792, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, November 18, 2002.

²¹² Order Addressing the Universal Service Fund, Order No. 2003-215, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, April 15, 2003.

²¹³ Order on Universal Service Fund, Order No. 2001-419, *Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 97-239-C, June 6, 2001.

²¹⁴ *Id.*, at 35-36.

²¹⁵ *Id.*, at 44; Tr. Vol. III at 572-73; Tr. Vol. IV at 1046.

²¹⁶ Motion to Withdraw Application, *Application of ALLTEL Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934*, Docket No. 2003-151-C, October 31, 2003.

²¹⁷ Order Granting Motion to Withdraw Application, Order No. 2003-702, *Application of ALLTEL Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934*, Docket No. 2003-151-C, December 8, 2003.

Docket No. 2003-227-C

Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier

On July 24, 2003, Hargray Wireless, LLC (Hargray) filed an application with the Commission seeking ETC designation.²¹⁸ In its petition, Hargray requests to receive “all available support from the federal Universal Service Fund (“USF”) including, but not limited to, support for rural, insular and high-cost areas and low-income customers.”²¹⁹ However, Hargray is not requesting support from the State of South Carolina USF.²²⁰ Hargray requests ETC designation in the same service area in which it is licensed by the FCC to provide PCS services; this includes the service areas of Bluffton Telephone Company, Inc, Hargray Telephone Company, Inc, United Telephone Company of the Carolinas, and Verizon South, Inc.²²¹

On October 23, 2003, through Order No. 2003-640, the Commission declined to set a pre-filing schedule for Hargray Wireless’ application, and instead ordered that dates be set after a hearing has been scheduled in the FTC Wireless proceeding.²²²

²¹⁸ *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, July 24, 2003.

²¹⁹ *Id.*, at 1.

²²⁰ *Id.*

²²¹ *Id.*, at 3, Exhibits B & C.

²²² Order, Order No. 2003-640, *Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunication Carrier*, Docket No. 2003-227-C, October 23, 2003.

Appendix C

SUMMARY OF SELECT FEDERAL AND STATE PROCEEDINGS

Joint Board Recommendations for ETC Designations

Federal-State Joint Board on Universal Service; Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (Adopted Feb. 27, 2004).

In its Recommended Decision,²²³ the Federal-State Joint Board on Universal Service (“Joint Board”) provides its recommendations concerning the process for designation of ETCs and the FCC’s rules regarding high-cost universal service support. Citing changes in the marketplace since the FCC’s rules were first adopted in 1997, the FCC requested that the Joint Board “review certain of the Commission’s [FCC] rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.”²²⁴

The Recommended Decision suggests that the FCC adopt “permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214” in order to “ensure that only fully qualified applicants receive designation as ETCs,” to “allow for a more predictable application process among states,” to “assist states in determining whether or not the public interest would be served by a carrier’s designation as an ETC,” and to “ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas.”²²⁵ Moreover, the Joint Board found that permissive federal guidelines for minimum ETC designation eligibility would allow states to effectuate a “higher level of scrutiny in areas served by rural carriers.”²²⁶

The Joint Board found that the new “broadly applied recommended federal guidelines would be most likely to ensure designation of carriers that are: financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, able to be the sole ETC in a service area if all other ETCs relinquish their designations, and able to provide consumers an evolving level of universal service.”²²⁷

Federal State Joint Board on Universal Service Virginia Cellular, LLC Petition

Federal-State Joint Board on Universal Service; Memorandum Opinion and Order, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Provider in the Commonwealth of Virginia, CC Docket No. 96-45, FCC 03-338, (Adpt. Dec. 31, 2003, Rel. Jan. 22, 2004).

On December 31, 2003, the FCC granted in part and denied in part, subject to conditions, the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the Commonwealth of Virginia. Virginia Cellular, a CMRS provider, became an ETC in two non-rural study areas and in five areas served by rural telephone companies. However, Virginia Cellular was denied ETC designation with regard to the study area of NTELOS, where the FCC did not find that ETC designation would be in the public interest.²²⁸

²²³ See *Recommended Decision*.

²²⁴ *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*).

²²⁵ *Recommended Decision*, at ¶¶ 2, 9, 11.

²²⁶ *Id.*, at ¶ 17.

²²⁷ *Id.*, at ¶ 16.

²²⁸ *Virginia Cellular Order*, at 2.

State of Vermont Public Service Board Stipulation

Order, *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unicel)*, Docket No. 5918, Vermont Public Service Board, November 14, 2003.

On November 14, 2003, the State of Vermont Public Service Board (VT PSB) granted ETC designation to RCC Atlantic, Inc. d/b/a Unicel (RCC), a CMRS provider. RCC's ETC serving area consists of 91 wire centers currently service by Verizon New England d/b/a Verizon Vermont.²²⁹

RCC's ETC approval was subject to a stipulation of the parties and conditions of the VT PSB "relating to customer deposits, disconnections and service quality."²³⁰ Additional conditions included "that RCC be required to use federal support to enhance its signal coverage, to actually expand its signal coverage, and to provide assistance to potential subscribers."²³¹ Moreover, the VT PSB required RCC to provide "CMRS Wireless Service Provider Local Number Portability" on or after May 24, 2004 and required RCC to provide detailed signal coverage information if it seeks recertification at the expiration of its designation at the end of 2005.²³²

FCC Designated ETC for Guam

Federal- State Joint Board on Universal Service; Memorandum and Order, Guam Cellular and Paging, Inc. d/b/a Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002)

On January 25, 2002, the FCC released an order granting the petition of Guam Cellular and Paging, Inc. (Guamcell) for ETC designation in Guam. The FCC asserted that Guamcell's ETC designation was in the public interest because Guamcell was "promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Guam."²³³ Pursuant to the *Twelfth Report and Order*,²³⁴ the FCC processed Guamcell's application because the Public Utilities Commission of Guam provided an "affirmative statement" that it did not have jurisdiction over the proceeding.

FCC Designated ETC for Tribal Lands

Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 01-283 (rel. Oct. 5 2001)

On October, 5, 2001, the FCC released an order granting the petition of Western Wireless Corporation (WWC) to be designated as an ETC "for service offered to tribal members on the Pine Ridge Reservation in South Dakota pursuant to Section 214(e)(6)" of the FTA 96.²³⁵ The FCC found that WWC's designation "serves the public interest by promoting competition and the provision of new technologies to tribal members."²³⁶

²²⁹ *Vermont Unicel Order*, at 3.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Guam Cellular Order*, at 2.

²³⁴ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 (2000) (*Twelfth Report and Order*).

²³⁵ *Pine Ridge Order*, at 1.

²³⁶ *Id.*

In the *Twelfth Report and Order*, the FCC concluded that a carrier seeking federal USF support in order to provide telecommunications service to tribal lands may petition the FCC for ETC designation without first petitioning the state commission.²³⁷

On May 21, 2003, the FCC issued an order addressing several petition for reconsideration.²³⁸ In the Order, the FCC affirmed, “the framework adopted by the Commission [FCC] for resolution of ETC designations on tribal lands.”²³⁹

²³⁷ *Twelfth Report and Order*, at para. 115.

²³⁸ *Order on Reconsideration and Order*, CC Docket No.96-45 , FCC 03-115 (rel. May 21, 2003).

²³⁹ *Id.*, at 3.

Appendix D

WIRELESS ETC DESIGNATIONS BY STATE²⁴⁰

STATE	Wireless Competitive ETC Name	ETC?
AK	Alaska Digitel LLC	Y
	Dobson Cellular Systems, Inc.	N
	GCI Communications Corp.	Y
	Matanuska-Kenai, Inc.	P
	ACS Wireless	P
AL	ALLTEL Communications, Inc.	P
	Pine Belt Cellular	Y
	Cellular South Licenses, Inc. (Alabama)	Y
	Corr Wireless Communications, LLC	Y
	Farmers Cellular Telephone, Inc.	N
	Nextel Partners, Inc. - AL	N
	NPCR, Inc.	P
	RCC Holdings	Y
AR	ALLTEL Communications, Inc.	N
	Sprint Spectrum DBA Sprint PCS	Y
AZ	ALLTEL Communications, Inc.	N
	Smith Bagley, Inc.	Y
CA	Western Wireless	Y
CO	Northeast Colorado Cellular, Inc.	Y
	Western Wireless	Y
FL	NPCR, Inc.	P
	RCC Holdings	Y
GA	ALLTEL Communications, Inc.	N
	NPCR, Inc.	P
	Public Service Cellular, Inc.	N
	RCC Holdings	Y
GU	Guam Cellular and Paging, Inc. dba Guamcell Comm	Y
HI	NPCR, Inc.	N
IA	Benton/Linn Wireless LLC	Y
	Brooklyn Mutual Telephone Co.	Y
	Cedar County PCS, LLC	Y
	Community Cable Television Co of O'Brien County	Y
	Community Digital Wireless, LLC	Y
	Coon Creek Telecommunications Corp.	Y
	Coon Rapids Municipal Communications Utility	Y
	Cooperative Telephone Co.	Y
	East Buchanan Telephone Cooperative	Y
	Farmers & Business Men's Tel Co dba F&B Comm	Y

²⁴⁰ The table shows wireless competitors operating in each state. The table was compiled using reports of the Universal Service Administrative Company to the FCC for the First Quarter of 2004: HC-18, HC-19, HC-20, and HC-21. The third column ("ETC") indicates whether the competitive carrier has been certified by the respective state to be an ETC under § 254(e). (Y)es, (N)o, or (P)ending application.

REVIEW OF PUBLIC POLICY CONSIDERATIONS RAISED BY WIRELESS ETC APPLICATIONS

STATE	Wireless Competitive ETC Name	ETC?
	Farmers Mutual Telephone Company-Harlan	Y
	Forest City Telecom, Inc.	Y
	Goldfield Access Network	N
	Grundy Center Municipal Utilities	Y
	Guthrie Telecommunications Network, Inc.	Y
	Harlan Municipal Utilities	Y
	Hawarden Municipal Utilities d/b/a Hitec	Y
	Heart of Iowa Communications Cooperative	Y
	Huxley Communications Cooperative	Y
	Independent Networks, LC	Y
	Iowa RSA No. 2 LP dba Verizon Wireless	Y
	Iowa Wireless Services, L.P.	Y
	Kalona Cooperative Telephone Co aka KCTC PCS	Y
	Lost Nation-Elwood Telephone Co	Y
	Louisa Communications	Y
	MAC Wireless, LLC	Y
	Manning Municipal Communications & Television	Y
	Midwest Wireless Iowa, LLC	Y
	Mill Valley Wireless	Y
	Montezuma Mutual Telephone Co.	Y
	Nextel Partners, Inc.	Y
	Northeast Iowa Telephone Co.	Y
	Olin Telephone Co., Inc.	Y
	Omnitel Communications, Inc.	N
	Reinbeck Municipal Telecommunications Utility	N
	SEI Wireless LLC	Y
	Sharon Telephone Company	Y
	South Slope Cooperative	Y
	Southeast Wireless, Inc.	Y
	The Community Agency	Y
	United States Cellular	Y
	Wapsi Wireless, LLC	Y
	Wellman Coop. Telephone Assoc.	Y
	Western Wireless Corp.	Y
ID	NPCR, Inc.	N
IL	Midwest Wireless Iowa, LLC	Y
	NPCR, Inc.	N
	United States Cellular Corporation	Y
IN	Centennial Cellular Tri-State Operating Partnership - IN	N
	Centennial Randolph Cellular LLC	N
	Elkhart Metronet, Inc.	N
	Hancock Communications, Inc.	Y
	Mega Comm LLC	N
	Michiana Metronet, Inc. - IN	N
	NPCR, Inc.	N
	SEI Data, Inc.	Y

REVIEW OF PUBLIC POLICY CONSIDERATIONS RAISED BY WIRELESS ETC APPLICATIONS

STATE	Wireless Competitive ETC Name	ETC?
	South Bend Metronet, Inc.	N
KS	RCC Minnesota, Inc.	P
	ALLTEL Kansas, LP	P
	Sprint Spectrum LP / Phillieco LP (dba Sprint PCS)	Y
	Western Wireless	Y
KY	NPCR, Inc.	N
	Southeast Telephone, Inc.	N
LA	ALLTEL Communications, Inc.	N
	Centennial Beauregard Cellular LLC	N
	Centennial Caldwell Cellular Corp.	N
	Centennial Hammond Cellular LLC	N
	Centennial Lafayette Communications LLC	N
	Centennial Morehouse Cellular LLC	N
	NPCR, Inc.	N
ME	RCC Maine	Y
	RCC Minnesota, Inc.	Y
	United States Cellular Corporation	N
MI	ALLTEL Communications, Inc.	N
	Centennial Michigan RSA 6 Cellular Corp.	N
	Centennial Michigan RSA 7 Cellular Corp	N
	Michiana Metronet, Inc. - MI	N
	RFB Cellular, Inc.	Y
	Thumb Cellular Limited Partnership	Y
MN	IOWA RSA #12, LLC dba Cellcom	Y
	Midwest Wireless Communications, LLC	Y
	NPCR, Inc.	N
	RCC Minnesota	N
	United States Cellular	Y
	Western Wireless	Y
	Wireless Alliance, LLC	N
MO	Fidelity Communications Services I Inc	Y
	Green Hills Area Cellular	N
	Mark Twain Communications, Co.	Y
	Missouri RSA#7 LP dba Mid-Missouri Cellular	P
	United States Cellular	Y
MP	Guam Cellular and Paging, Inc.	N
MS	Alltel - MS	N
	Cellular South License, Inc.	Y
	Centennial Cellular Tri-State Operating Partnership - MS	N
	Centennial Clairborne Cellular Corp.	N
	Communigroup	N
	Dixie-Net	Y
	Nextel Partners, Inc. - MS	N
	RCC Holdings, Inc.	Y
	WS Telecom dba Expetel Comm	N
MT	3 Rivers Telephone Cooperative, Inc.	N

REVIEW OF PUBLIC POLICY CONSIDERATIONS RAISED BY WIRELESS ETC APPLICATIONS

STATE	Wireless Competitive ETC Name	ETC?
	Interbel Tel Coop	N
	Mid-Rivers Tel. Coop.	Y
	Western Wireless	Y
NC	Alltel Communications, Inc	N
ND	HTC Services, Inc.	Y
	North Dakota Network Company	Y
	Polar Telecom, Inc.	Y
	RCC Minnesota	N
	Western Wireless	Y
	Wireless Alliance, LLC	N
NE	Nebraska Tech. & Telecommunications, Inc.	N
	Northeast Colorado Cellular, Inc.	Y
	NPCR, Inc.	P
	Western Wireless - Pine Ridge	Y
	Western Wireless Corp.	N
NH	RCC Minnesota, Inc.	N
	United States Cellular Corporation	N
NM	Alltel Communications, Inc	N
	Leaco Rural Telephone Coop., Inc.	Y
	Smith Bagley	Y
	Western Wireless	Y
NV	RCC Minnesota, Inc.	N
	Western Wireless	Y
NY	MCImetro Access Transmission Services, LLC	Y
	NPCR, Inc.	P
OK	Dobson Cellular Systems, Inc.	N
	Sage Telecom, Inc.	Y
	United States Cellular Corporation	N
	Western Wireless	Y
OR	RCC Minnesota, Inc.	N
	United States Cellular Corporation	N
PA	NPCR, Inc.	P
PR	Centennial Puerto Rico Operations Corp	Y
	Sprint Spectrum dba Sprint PCS	N
	Telecorp dba AT&T Wireless Puerto Rico	N
SC	ALLTEL Communications, Inc.	N
	FTC Communications, Inc.	P
	Hargray Wireless LLC	P
SD	RCC Minnesota, Inc.	N
	United States Cellular	Y
	Western Wireless	Y
	Wireless Alliance, LLC	N
TN	Ben Lomand Communications, Inc.	Y
	NPCR, Inc.	P
TX	Cumby Tel Coop Inc	Y
	Cutter Communications Inc dba GCEC Technologies	N

REVIEW OF PUBLIC POLICY CONSIDERATIONS RAISED BY WIRELESS ETC APPLICATIONS

STATE	Wireless Competitive ETC Name	ETC?
	Dobson Cellular Systems, Inc	N
	Nortex Telecom L.L.C.	Y
	NPCR, Inc.	N
	Panhandle Telecommunication Systems, Inc.	Y
	Sage Telecom of Texas, L.P.	Y
	Santa Rosa Tel Coop	Y
	W. T. Services, Inc.	Y
	Western Wireless	Y
	XIT Telecommunication and Technology, Inc.	Y
UT	Smith Bagley, Inc.	N
	Western Wireless	Y
VA	Highland Cellular, Inc.	Y
	NPCR, Inc.	P
	Sprint Spectrum	N
	ALLTEL Communications, Inc.	P
	Virginia Cellular Limited Partnership	Y
VT	NPCR, Inc.	N
	RCC Atlantic, Inc.	Y
WA	Eastern Sub-RSA LP dba Inland Cellular	Y
	RCC Minnesota, Inc.	Y
	United States Cellular Corporation	Y
	Washington RSA No. 8 LP dba Inland Cellular	Y
WI	ALLTEL Communications, Inc.	Y
	Bayland Communications, Inc.	Y
	Brown County MSA Cellular Ltd. Partnership	N
	Chequamegon Telecomm Company, Inc. aka Cheqtel	Y
	CTC Telecom Inc	Y
	Midwest Wireless Wisconsin, LLC	N
	NPCR, Inc.	N
	United States Cellular Corporation	Y
	Wausau Cellular Telephone Company, LP	N
	Wisconsin RSA #10 Limited Partnership	N
WV	Alltel - WV	N
	Easterbrooke Cellular Corporation	N
	FiberNet, LLC	Y
	Gateway Telecom LLC, dba Stratus Wave Comm	Y
	Highland Cellular, Inc.	Y
	NPCR, Inc.	N
	Sprint Spectrum	N
WY	Silver Star Tel - WY	Y
	Western Wireless	Y